

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KLAUBER BROTHERS, INC.	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action No.: 15-CV-00874
	:	
AMERICLO COUTURE INC. d/b/a/	:	
I.C. LONDON and d/b/a ALISSA	:	
CAGGIANO; JEFFERY LUO; and	:	
MICHAEL KIN SOON LEONG	:	
	:	
Defendants.	:	

**ANSWER OF AMERICLO COUTURE INC. AND JEFFERY LUO**  
**TO COMPLAINT**

Americlo Couture Inc. and Jeffery Luo (collectively “Americlo Defendants”) hereby answer the complaint and assert affirmative defenses as follows:

**COUNT NO. 1**

**JURISDICTION AND VENUE**

1. This paragraph contains no factual allegations and requires no response.  
To the extent it may be construed to contain factual allegations, denied.
2. This paragraph contains no factual allegations and requires no response.  
To the extent it may be construed to contain factual allegations, denied.

**THE PARTIES**

3. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

4. Denied as stated. Americlo Couture Inc. is a New York corporation having an office at 6 Manor Drive, Great Neck, NY 11020. Haan Group Inc. has a facility at 43-31 33<sup>rd</sup> Street, Long Island City, NY 11101. 56-02 Roosevelt Avenue, Woodside, NY 11377 has been closed since approximately 2012.

5. Denied as stated. Jeffery Luo is a resident of New York State. Americlo Couture Inc. is a New York corporation having an office at 6 Manor Drive, Great Neck, NY 11020. Haan Group Inc. has a facility at 43-31 33<sup>rd</sup> Street, Long Island City, NY 11101. 56-02 Roosevelt Avenue, Woodside, NY 11377 has been closed since approximately 2012. The remaining allegations of paragraph 5 are specifically denied.

6. Denies the allegations set forth in paragraph 6 of the Complaint.

#### **FACTS**

7. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

8. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

9. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

10. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

11. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

12. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

13. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

14. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

15. Denies the allegations set forth in paragraph 15 of the Complaint.

16. Denies the allegations set forth in paragraph 16 of the Complaint.

17. Denies the allegations set forth in paragraph 17 of the Complaint.

18. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

19. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

20. Denies the allegations set forth in paragraph 20 of the Complaint.

## **COUNT NO. II**

### **JURISDICTION, VENUE AND THE PARTIES**

21. Americlo Defendants incorporate their responses to paragraphs 1-20 as if fully set forth herein.

### **FACTS**

22. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

23. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

24. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

25. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

26. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

27. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

28. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

29. Americlo Defendants do have not sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore deny.

30. Denies the allegations set forth in paragraph 30 of the Complaint.

31. Denies the allegations set forth in paragraph 31 of the Complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

32. The Complaint fails to state a claim for which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

33. Americlo Couture Inc. has not infringed, does not infringe and is not liable for infringement of any valid copyright of Plaintiff.

#### **THIRD AFFIRMATIVE DEFENSE**

34. Jeffery Luo has not infringed, does not infringe and is not liable for infringement of any valid copyright of Plaintiff.

#### **FOURTH AFFIRMATIVE DEFENSE**

35. Plaintiff's claims are barred in whole or in part due to Plaintiff's failure to mitigate damages.



**FOURTH AFFIRMATIVE DEFENSE**

36. Plaintiff's claims are barred to the extent Plaintiff claims rights to elements that are functional, are not original, or are otherwise not protectable by copyright.

**FIFTH AFFIRMATIVE DEFENSE**

37. Plaintiff's claims are barred under the doctrine of copyright misuse.

**FIFTH AFFIRMATIVE DEFENSE**

38. Plaintiff's claims are barred under the first sale doctrine.

**SIXTH AFFIRMATIVE DEFENSE**

39. Plaintiff's claims are barred as the claimed materials contain no original artistic expression.

**SEVENTH AFFIRMATIVE DEFENSE**

40. Plaintiff's claims are barred to the extent any person who Plaintiff seeks to hold liable are innocent infringers.

**EIGHTH AFFIRMATIVE DEFENSE**

41. The Americlo Defendants developed all products in good faith with reasonable belief that their use was proper.

**NINTH AFFIRMATIVE DEFENSE**

42. Plaintiff has suffered no damages proximately caused by the Americlo defendants as a result of the matters raised in the complaint.

**TENTH AFFIRMATIVE DEFENSE**

43. Plaintiff has not suffered any irreparable injury. Plaintiff has an adequate remedy at law, and is not entitled to injunctive relief.

**ELEVENTH AFFIRMATIVE DEFENSE**

44. Americlo Couture Inc. and Jeffery Luo deny they are liable to Plaintiff for any amount or that Plaintiff is entitled to any relief whatsoever.

Defendants request that this Court dismiss Plaintiff's complaint with prejudice and request the Court award Defendants their attorney fees, costs and any and all such relief to which they may be entitled.

**AMERICLO DEFENDANTS' FIRST COUNTERCLAIM**

45. Plaintiff's Complaint was brought in bad faith by Plaintiff to damage the relationship between Defendants and their customers and to unfairly compete with Defendants. Accordingly, Defendants are entitled to have and recover their costs and attorney's fees incurred in defending against this action.

46. Defendants reserve the right to assert and pursue additional affirmative defenses.

**WHEREFORE**, the Americlo defendants demand judgment dismissing the Complaint in its entirety, judgment in favor of the Americlo Defendants on their First Counterclaim, together with attorneys' fees, the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Ryder, Lu, Mazzeo & Konieczny LLC

Date: April 5, 2015

s/ Kao Lu

Kao Lu (*pro hac vice* admission to be filed)

Alison Dudick (*pro hac vice* admission to be filed)

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*Attorneys for Defendants Americlo Couture Inc.  
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*Local Counsel for Defendants Americlo Couture  
Inc. and Jeffery Luo*

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MICHAEL KIN SOON LEONG

Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that on April \_\_\_, 2015, Americlo Couture Inc. and Jeffery Luo Answer to Complaint was served via electronic mail to the following attorneys of record:

Philip H. Gottfried  
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*Attorneys for Plaintiff*

s/ Alison Dudick